

**LICENSE AGREEMENT FOR WIRE, PIPE AND CABLE
TRANSVERSE CROSSINGS AND LONGITUDINAL
OCCUPATIONS**

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PCOV 0459 170

THIS AGREEMENT, made this 1st day of August, 1986
between CONSOLIDATED RAIL CORPORATION, a Pennsylvania Corporation

DOCUMENTARY
SURCHARGE
PAID \$3.00

party of the first part (hereinafter called "Railroad") and CROUSE RECOVERY OF DELAWARE,
INC., a Delaware Corporation

, as party of the second part (hereinafter called "Licensee").

WITNESSETH, that the said Railroad (which when used herein shall include any lessor, successor or assignee of or operator over its railroad) insofar as it has the legal right and its present title permits, and in consideration of the covenants and conditions hereinafter stated on the part of the Licensee to be kept and performed, hereby permits, as a temporary license, the Licensee to construct, maintain, repair, alter, renew, relocate and ultimately remove the following facilities through the lands and under and across and along the roadway and tracks of the New Castle Industrial Track of Railroad (formerly held by The Pennsylvania Railroad Company) as follows:

a longitudinal occupation of one (1) 14-inch steel steam pipe encased in a 22-inch and 26-inch steel pipe (as shown on construction plans), entering Railroad's easterly right of way at Valuation Station 193+93+, travelling in a southerly direction to Valuation Station 186+28+, at which point facility turns in an easterly direction and leaves Railroad property; together with a longitudinal occupation of one (1) 24-inch x 38-inch reinforced concrete elliptical gravity flow storm water pipe located between Valuation Station 193+03+ and Valuation Station 193+95+; including a new concrete headwall, a manhole catch basin, rip rap, valley gutter, precast concrete vault, ten feet of one (1) 6-inch corrugated metal gravity flow storm water pipe, and six feet of one (1) 24-inch reinforced concrete gravity flow storm water pipe; together with additional drainage improvements (as shown on construction plans), all located between 1,838 feet and 2,503 feet south of Mile Post 2, at a point between 2.99 and 2.86 miles north of the Station of New Castle, New Castle County, Delaware,

in accordance with construction plans #D.A.-D409H/03-C-6, D.A.-D409H/03-C-11 submitted by Licensee to and approved by the Chief Engineer of Railroad, incorporated herein by reference; also in accordance with current issues of Railroad Specifications Nos. CE 4 and/or CE 8; and shown on Plan No. D-849, dated July 31, 1986, marked Exhibit "A," attached hereto and made a part of this Agreement, all and any part thereof being hereafter referred to as the "FACILITIES"; said license, however, shall be under and subject to the following terms, covenants, and conditions as hereinafter recited, which are hereby accepted and agreed to, by the Licensee, to wit:

1. The Licensee shall pay to the Railroad upon the execution hereof, the sum of Three Hundred Fifty Dollars (\$350.00) as reimbursement for the costs and expenses incident to the preparation of this Agreement, together with the further sum of Three Hundred Seventy-Nine Dollars (\$379.00) per year as minimum annual rental, which said sum shall be payable annually in advance, commencing as of August 1, 1986. Railroad reserves the right to make adjustments in these rental charges.

2. (a) The FACILITIES shall be located, constructed and maintained in exact accordance with said construction plans and for the purpose as outlined on Page 1. No departure shall be made at any time therefrom except upon permission in writing granted by the Chief Engineer of Railroad, or his designee, provided, however, that if any commission or other regulatory body duly constituted and appointed in compliance with the laws of the State in which the crossing or occupancy herein provided is situate, and having jurisdiction in the premises, has by ruling or other general order determined and fixed the manner and means of construction, maintenance, repair, alteration, renewal, relocation or removal thereof, then said ruling or general order shall prevail for the crossing or occupancy herein mentioned.

(b) The work of constructing, maintaining, repairing, altering, renewing, relocating or removing the said FACILITIES shall be done under such general conditions as will be satisfactory to and approved by the Chief Engineer of Railroad, or his designee, and as will not interfere with the proper and safe use, operation and enjoyment of the property of the Railroad. Licensee, at its own cost and expense, shall, when performing any work in connection with the FACILITIES, furnish any necessary inspectors, flagmen or watchmen to see that men, equipment, and materials are kept a safe distance away from the tracks of the Railroad.

(c) In addition to, but not in limitation of any of the foregoing provisions, if at any time the Railroad should deem inspectors, flagmen or watchmen desirable or necessary to protect its operations or property, or its employees, patrons or Licensees during the work of construction, maintenance, repair, alteration, renewal, relocation or removal of said FACILITIES of Licensee, the Railroad shall have the right to place such inspectors, flagmen or watchmen at the sole risk, cost and expense of Licensee, which covenants and agrees to bear the full cost and expense thereof and to promptly reimburse the Railroad upon demand. The furnishing or failure to furnish inspectors, flagmen or watchmen by the Railroad, however, shall not release the Licensee from any and all other liabilities assumed by the Licensee under the terms of this Agreement.

3. If the Licensee desires or is required, as herein provided, to revise, renew, add to or alter in any manner whatsoever the aforementioned FACILITIES, it shall submit plans to Railroad and obtain the written approval of the Chief Engineer of Railroad thereto before any work or alteration of the structure is performed and the terms and conditions of this Agreement with respect to the original construction shall apply thereto. Railroad reserves the right to make adjustments in the rental charges.

4. (a) The Licensee shall at all times be obligated to promptly maintain, repair and renew said FACILITIES; and shall, upon notice in writing from Railroad and requiring it so to do, promptly make such repairs and renewals thereto as may be required by Railroad; or the Railroad, for the purpose of protecting and safeguarding its property, traffic, patrons or employees from damage or injury, may with or without notice to the Licensee at any time make such repairs and renewals thereto and furnish such material therefor as it deems adequate and necessary, all at the sole cost and expense of Licensee.

(b) In the event of an emergency, Licensee will take immediate steps to perform any necessary repairs, and in the event Licensee fails so to do, Railroad will perform said necessary repairs at the sole cost and expense of Licensee.

5. (a) The supervision over the location of the construction work and inspection of the FACILITIES and the approval of the material used in construction, maintenance, repair, alteration, renewal, relocation and removal of the aforesaid FACILITIES covered by this Agreement shall be within the jurisdictional rights of the Railroad.

(b) The right of supervision over the location of the construction work and inspection of the FACILITIES from time to time thereafter by the Railroad, shall extend for an appropriate distance on each side of the property of the Railroad as the method of construction and materials used may have an important bearing upon the strength and stability of the FACILITIES over, under, upon, or in the property of the Railroad.

6. Licensee shall comply with all Federal, State and local laws, and assume all cost and expense and responsibility in connection therewith, without any liability whatsoever on the part of the Railroad.

7. (a) It is understood between the parties hereto that the operations of the Railroad at or near said FACILITIES involve some risk, and the Licensee as part of the consideration for this license hereby releases and waives any right to ask for or demand damages for or account of loss of or injury to the FACILITIES (and contents thereof) of the Licensee that are over, under, upon, or in the property and facilities of the Railroad including the loss of or interference with service or use thereof and whether attributable to the fault, failure or negligence of the Railroad or otherwise.

(b) And the Licensee also covenants and agrees to and shall at all times indemnify, protect and save harmless the Railroad from and against all cost or expense resulting from any and all losses, damages, detriments, suits, claims, demands, costs and charges which the said Railroad may directly or indirectly suffer, sustain or be subjected to by reason or on account of the construction, placement, attachment, preverence, use, maintenance, repair, alteration, renewal, relocation or removal of said FACILITIES in, on, about or from the premises of Railroad whether such losses and damages be suffered or sustained by the Railroad directly or by its employees, patrons, or licensees, or be suffered or sustained by other persons or corporations, including the Licensee, its employees and agents who may seek to hold the Railroad liable therefor, and whether attributable to the fault, failure or negligence of the Railroad or otherwise, except when proved by Licensee to be due directly to the sole negligence of the Railroad.

(c) If a claim or action is made or brought against either party and for which the other party may be responsible hereunder in whole or in part, such other party shall be notified and permitted to participate in the handling or defense of such matter.

8. All cost and expenses in connection with the construction, maintenance, repair, alteration, renewal, relocation and removal of said FACILITIES shall be borne by the Licensee, and in the event of work being performed or material furnished by Railroad under the stipulated right to perform such work of construction, maintenance, repair, alteration, renewal, relocation or removal under any section hereof, Licensee agrees to pay to the Railroad the actual cost of material plus the current applicable overhead percentages for storage, handling, transportation, purchasing and other related material management expenses and the actual cost of labor plus the current applicable overhead percentages as developed and published by the accounting department of Railroad for fringe benefits, payroll taxes, administration, supervision, use of tools, machinery and other equipment, supplies, employers liability insurance, public liability insurance, and other insurance, taxes and all other indirect expenses. It is to be understood that the aforementioned material and labor overhead charges are to be applied at the rates which are effective at the time of the performance of any work by employees of the Railroad on the said FACILITIES. Licensee agrees to pay such bills within thirty (30) days of the presentation thereof by Railroad.

9. The Licensee shall, at its sole cost and expense, upon request in writing of the Railroad, promptly change the location of said FACILITIES covered by this Agreement, where located over, upon or in the property and facilities of the Railroad, to another location, to permit and accommodate changes of grade or alignment and improvement in or additions to the facilities of the Railroad upon land now or hereafter owned or used by the Railroad to the intent that said construction shall at all times comply with the terms and conditions of this Agreement with respect to the

original construction; or in the event of the lease, sale or disposal of the premises or any part thereof encumbered by this license, then the said Licensee shall make such adjustments or relocations in its facilities as are over, upon or in the property and facilities of the Railroad as may be required by the said Railroad or its grantee; and if the Licensee shall fail or refuse to comply therewith, then the duly authorized agents of the Railroad may make such repairs or adjustments or changes in location and provide necessary material therefor.

10. Upon termination of this Agreement or upon the removal or abandonment of the FACILITIES covered hereby, all the rights, title and interest of the Licensee hereunder shall cease and determine, and this instrument shall thereupon become and be null and void, without any liability on the part of either party to the other party except only as to any rentals and liability accrued prior thereto, and the Licensee shall remove its said FACILITIES and appurtenances from Railroad property, and right-of-way and all property of the Railroad shall be restored in good condition and to the satisfaction of the Railroad. If the Licensee fails or refuses to remove its FACILITIES and appurtenances under the foregoing conditions, the Railroad shall be privileged to do so at the cost and expense of the Licensee, and the Railroad shall not be liable in any manner to the Licensee for said removal.

11. In the event the FACILITIES consist of an underground occupation, Licensee will be responsible for any settlement caused to the roadbed, right of way and/or tracks, facilities, and appurtenances of the Railroad arising from or as a result of the installation of the said FACILITIES for a period of one (1) year subsequent to the date of completion of the installation, and Licensee agrees to pay to Railroad on demand the full cost and expense therefor.

12. In the event the said FACILITIES consist of electrical power or communication wires and/or appurtenances, the Licensee shall at all times be obligated promptly to remedy any inductive interference growing out of or resulting from the presence of its FACILITIES; and if the Licensee should fail so to do, then Railroad may do so, and the Licensee agrees to pay to Railroad on demand the full cost and expense therefor.

13. As part of the consideration of the within Agreement, Licensee covenants and agrees that no assessments, taxes or charges of any kind shall be made against Railroad or its property by reason of the construction of said FACILITIES of Licensee, and Licensee further covenants and agrees to pay to Railroad promptly upon bills rendered therefor the full amount of any assessments, taxes or charges of any kind which may be levied, charged, assessed or imposed against the Railroad or its property by reason of the construction and maintenance of said FACILITIES of Licensee.

14. The rights conferred hereby shall be the privilege of the Licensee only, and no assignment or transfer hereof shall be made, or other use be permitted than for the purpose stated on page one without the consent and agreement in writing of the Railroad being first had and obtained.

15. This Agreement with the rights granted may be terminated at any time by either party hereto upon not less than thirty (30) days' written notice to the other; and upon the expiration of the said thirty (30) days after service of such notice, this agreement and the permission and privilege hereby granted shall absolutely cease and terminate.

16. This Agreement shall take effect as of the 1st day of August A.D. 1986, subject to the provisions of Paragraph 17.

17. This Agreement will not become valid until the method of installation and all related matters have been approved by the Chief Engineer - Design and Construction of Railroad or his duly designated representative.

18. Automobile mileage charges incurred by aforementioned Railroad Inspectors, Flagmen or Watchmen in connection with the installation, maintenance, etc., of said facility will be based on allowances approved by The United States Government in effect at the time the expenses are incurred.

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19. The charges provided in Paragraph One as fixed minimum annual rent, shall on an annual basis, be increased or decreased by the same percentage of increase or decrease as reflected in the "Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W) (1967 = 100) specified for All Items - United States compiled by the Bureau of Labor Statistics of the United States Department of Labor." In no event, however, shall the rent be less than the fixed minimum rent payable as of the effective date of this agreement.

The fixed minimum rent payable shall be increased or decreased in accordance with the following:

- (a) The fixed minimum rent shall be adjusted annually, commencing August, 1987.
- (b) Each adjustment shall be made with reference to the price index for the fourth month immediately preceding the effective date of each adjustment (Current Price Index).
- (c) Each such adjustment shall be made by determining the percentage increase of the then Current Price Index divided by the price index for the full calendar month of the effective date of this lease (Base Price Index).
- (d) The percentage thus determined shall be multiplied by the then applicable fixed minimum rent hereinabove set forth, and the product thus determined shall represent the increase payable in addition to the fixed minimum rent until a subsequent adjustment shall be made under this section.

$$\frac{\text{Current Price Index}}{\text{Base Price Index}} \times \text{Fixed Minimum Rent Payable} = \text{Rent}$$

In the event the index shall hereafter be converted to a different standard reference base or otherwise revised, the determination of the percentage increase shall be made with the use of such conversion factor, formula or table for converting the index as may be published by the Bureau of Labor Statistics or, if said Bureau shall not publish the same, then as shall be reasonably determined by Railroad.

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The terms of this Agreement shall be binding and effective upon all the parties hereto, and unless and until terminated, as hereinbefore provided, this Agreement shall inure to the benefit of and be binding upon the parties hereto, their successors and assigns, subject, however, to the provisions of Article 14 of this Agreement.

IN WITNESS WHEREOF, the said parties hereto have caused this Agreement to be duly executed and delivered as of the day and year first above written.

WITNESS:

CONSOLIDATED RAIL CORPORATION

Gail Janice Grangelista

BY C. E. Wogan
C. E. Wogan
General Manager-Contracts

WITNESS:

CROUSE RECOVERY OF DELAWARE, INC.

B. C. Mashings

BY [Signature]
Its

ANY CORRESPONDENCE IN CONNECTION WITH
THE CONTENTS OF THIS AGREEMENT, EXCEPT
AS RELATED TO BILLING, SHOULD BE ADDRESSED
TO.

CONSOLIDATED RAIL CORPORATION
1528 WALNUT STREET
PHILADELPHIA, PA. 19102
ATTN GENERAL MANAGER - CONTRACTS

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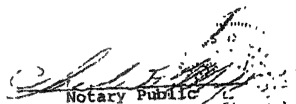
ACKNOWLEDGEMENT

Commonwealth of Pennsylvania:

: SS

County of PHILADELPHIA:

On this 30TH day of OCT, 1986, before me a Notary Public, the undersigned officer, personally appeared C. E. Wogan who acknowledged to be the General Manager-Contracts of Consolidated Rail Corporation, a corporation, and that he as such General Manager - Contracts being authorized to do so, executed the foregoing instrument for the purposes therein contained by signing the name of the corporation by as


Notary Public
CHARLES F. MYERS
Notary Public, Phila. Pa. Co.
My Commission Expires Feb 14, 1989

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STATE OF DELAWARE)
) SS
NEW CASTLE COUNTY)

BE IT REMEMBERED, that on this 30 day of October, 1986, personally came before me, a Notary Public for the State of Delaware, FRANK CAMDELL, President of CROUSE RECOVERY OF DELAWARE, INC., a corporation existing under the laws of the State of Delaware, party to this Indenture, known to me personally to be such, and acknowledged this Indenture to be his act and deed and the act and deed of said corporation, that the signature of the President thereto is in his own proper handwriting and the seal affixed is the common and corporate seal of said corporation, and that his act of sealing, executing, acknowledging and delivering said Indenture was duly authorized by a resolution of the Board of Directors of said corporation.

GIVEN under my Hand and Seal of office, the day and year aforesaid.

Walter A. Campbell
Notary Public
attorney at law

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